

# UNITED STATES DISTRICT COURT

WESTERN

District of

NORTH CAROLINA

UNITED STATES OF AMERICA

V.

HORACIO LOPEZ-QUIROZ

*Defendant*

## ORDER OF DETENTION PENDING TRIAL

Case

1:09 mj 75

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

### Part I—Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. § 3142(f)(1) and has been convicted of a ☐ federal offense ☐ state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed - that is
- ☐ a crime of violence as defined in 18 U.S.C. § 3156(a)(4).
- ☐ an offense for which the maximum sentence is life imprisonment or death.
- ☐ an offense for which a maximum term of imprisonment of ten years or more is prescribed in \_\_\_\_\_ .\*
- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. § 3142(f)(1)(A)-(C), or comparable state or local offenses.
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- ☐ (3) A period of not more than five years has elapsed since the ☐ date of conviction ☐ release of the defendant from imprisonment for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

### Alternative Findings (A)

- X (1) There is probable cause to believe that the defendant has committed an offense
- X for which a maximum term of imprisonment of ten years or more is prescribed in 21 U.S.C. § 841 under 18 U.S.C. § 924(c).
- X (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

### Alternative Findings (B)

- X (1) There is a serious risk that the defendant will not appear.
- X (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

SEE ATTACHED ADDENDUM TO DETENTION ORDER

### Part II—Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by X clear and convincing evidence X a preponderance of the evidence that

SEE ATTACHED ADDENDUM TO DETENTION ORDER

### Part III—Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Date

Signature of Judge

Dennis L. Howell, United States Magistrate Judge

Name and Title of Judge

\*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. § 801 *et seq.*); (b) Controlled Substances Import and Export Act (21 U.S.C. § 951 *et seq.*); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. § 955a).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:09 mj 75**

**UNITED STATES OF AMERICA,**

**Vs.**

**ADDENDUM TO  
DETENTION ORDER**

**HORACIO LOPEZ-QUIROZ.**

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**I. FACTORS CONSIDERED**

**18 U.S.C. § 3142:**

**(g) Factors to be considered.**--The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning--

**(1)** The nature and circumstances of the offense charged, including whether the offense is a crime of violence, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

**(2)** the weight of the evidence against the person;

**(3)** the history and characteristics of the person, including--

**(A)** the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

**(B)** whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

**(4)** the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

## II.

## FINDINGS

### As to factor:

**(g)(1):** The nature and circumstances of the offense charged involve a controlled substance.

**(g)(2):** The weight of the evidence against the person appears to be at the level of probable cause.

**(g)(3):** The history and characteristics of the person

(A) Family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history and record concerning appearance at court appearances indicate that the defendant has family ties in the country of Mexico, that being his father and four siblings. The defendant has family ties in Macon County, NC, that being his wife and two minor children. He has employment and a length of residence in Macon County, NC of approximately nine years. The defendant has physical disabilities, that being diabetes, problems in his left side and a tumor on his right hand. The defendant's criminal history shows the following convictions:

<u>Offense</u>	<u>Conviction Date</u>
Third degree theft, OR	10/30/96
Failed to appear on charges of second degree theft, giving false information to a law enforcement officer, OR	02/03/96
Possession of a controlled substance for sale, CA	02/27/09

The defendant's record concerning appearance at court appearances shows that the defendant failed to appear in the state of Oregon on charges of second degree theft in 1996 and he failed to appear in 1999 in the state of Oregon on charges of second degree theft. It further appears that the defendant is illegally in the United States.

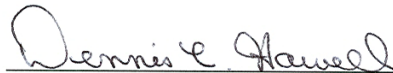
(B) At the time of the current offense or arrest, the defendant was on probation, parole or other release pending trial, sentencing, appeal or completion of sentence. It appears that this factor does exist. At the time of his arrest on this matter he was serving a term of supervised probation from the state of California.

**(g)(4):** The nature and seriousness of the danger to any person or the community that would be posed by the person's release indicate that a presumption has been created by virtue of the charge contained in the bill of indictment that there are no conditions or combination of conditions that would assure the safety of the community if the defendant were released. The defendant, by evidence, has not rebutted this presumption and as a result the undersigned will detain the defendant pending further proceedings in the District Court in California. The

undersigned does find by a preponderance of the evidence that the release of the defendant would create a risk of flight on his part. The defendant has not rebutted the presumption. The defendant has also failed to appear in the state of Oregon in regard to two charges and it appears that the defendant is illegally in the United States. Those factors create a presumption that the release of the defendant would create a risk of flight on his part. The undersigned will detain the defendant pending further proceedings in the District Court in California as to the release of the defendant.

**WHEREFORE**, it is **ORDERED** that the defendant be detained pending further proceedings on the issue of detention in the District court for California. This Order is entered without prejudice to the entire issue of detention being reviewed by the court in the District Court of California and a determination made at that time as to the detention of the defendant pending trial.

Signed: December 17, 2009



Dennis L. Howell  
United States Magistrate Judge

